



4000-01-U

DEPARTMENT OF EDUCATION

Notice of Investigation and Record Requests

AGENCY: Office of the General Counsel, Department of Education.

ACTION: Notice.

SUMMARY: The Department publishes letters, dated September 26, 2019, notifying the University of Maryland and the Massachusetts Institute of Technology of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source.

FOR FURTHER INFORMATION CONTACT: Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Ave., SW, room 6E300, Washington, DC 20202.
Telephone: (202) 453-6339. Email: Patrick.Shaheen@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department publishes letters, dated September 26, 2019, notifying the University of Maryland and the Massachusetts Institute of Technology

of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source. The letter to the University of Maryland is in Appendix A of this notice. The letter to the Massachusetts Institute of Technology is in Appendix B of this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article

search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. § 1011f.

Reed D. Rubinstein,
Acting General Counsel.

Appendix A - Letter to University of Maryland

September 26, 2019

Wallace D. Loh, President
University of Maryland
1101 Main Administration Building
7901 Regents Dr.
College Park, MD 20742-6105

Re: Notice of 20 U.S.C. § 1011f Investigation and
Record Request/University of Maryland

Dear President Loh:

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, requires the University of Maryland to report statutorily defined gifts from and contracts with a foreign source to the U.S. Department of Education. These reports are posted at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department is concerned that your reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources to the University of Maryland and/or its affiliated entities operating substantially under the auspices of your institution or for its benefit (e.g., laboratories, schools, centers, foundations, and non-profit organizations such as the "University of Maryland Foundation", the "Maryland Catalyst Fund", or the "Maryland International Incubator", and their employees, faculty, lecturers, researchers, and fellows) (collectively "UMD") as required by law. See, e.g., <https://president.umd.edu/communications/statements/umds-commitment-international-collaborations-and-international-community>.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative

investigation and now requests UMD produce the following records within thirty days:

1. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

2. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with (i) the government of the People's Republic of China, the Central Committee of the Communist Party of China, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, Peking University, China University of Petroleum, Beijing Kaiwen Educational Technology Co. and their agents; (ii) the government of Qatar (including those persons known as the Qatar Foundation for Education, Science and Community Development aka the Qatar Foundation aka the Qatar National Research Fund), and its agents; and (iii) the government of Russia, the Skolkovo Foundation, Kaspersky Lab and Kaspersky Lab US, and their agents to your Institution. The time frame for this request is January 1, 2012, to the present.

3. All records of, regarding, or referencing "Hanban" or the Office of Chinese Language Council International and its agents to your Institution. The time frame for this request is January 1, 2014, to the present.

4. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with the Confucius Institute and its agents to your Institution. The time frame for this request is January 1, 2010, to the present.

5. All records of, regarding, or referencing the audit and accounting practices and/or other institutional controls used to capture, track, report, and verify gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

6. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign

source to your Institution that were not properly reported to the Department of Education. For each such gift, contract, and/or restricted or conditional gift or contract from or with a foreign source to your Institution, please explain your Institution's failure to report. The time frame for this request is January 1, 2014, to the present.

7. All records of, regarding, or referencing solicitation by your Institution of gifts, contracts, and/or restricted or conditional gifts or contracts with or from a foreign source. The time frame for this request is January 1, 2014, to the present.

8. All records of, regarding, or referencing compliance by your Institution with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.

9. All communications between your Institution and a foreign source listed as or a resident of a country requiring cooperation with an international boycott pursuant to 26 U.S.C. § 999(a)(3). The time frame for this request is January 1, 2014, to the present.

10. All records of, regarding, or referencing actions taken and institutional controls created by your Institution to confirm (a) each foreign source has not violated 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b) each gift, contract, and/or restricted or conditional gift or contract from or with a foreign source complies with Executive Order 13224. The time frame for this request is January 1, 2014, to the present.

11. Your Institution's IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.

12. A list of all persons at your Institution supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source (e.g., a research scientist working on a project developing artificial intelligence or engineering systems funded in whole or in part by a foreign source, a foreign graduate student studying physics under a scholarship or other contractual arrangement with a foreign government, a

fellow in a cultural studies program created by endowment or other gift from a foreign source). The relevant foreign source should be specified for each such person. The time frame for this request is January 1, 2014, to the present.

13. A list of all persons responsible for 20 U.S.C. § 1011f compliance. The time frame for this request is January 1, 2014, to the present.

14. All certifications and related documentation required under the International Traffic in Arms Regulations (ITAR), 22 CFR Subchapter M, the Arms Export Control Act of 1976 (Title II of Pub.L. 94-329), 90 Stat. 729, 22 U.S.C. Chapter 39, the Export Administration Regulations (EAR), 15 CFR § 730 et seq., or any other related authority with respect to programs and activities sponsored by your Institution. The time frame for this request is January 1, 2014, to the present.

As used in this Notice of Investigation and Information Request:

"Agent" means any person who acts for or on behalf of a foreign source and includes a subsidiary or affiliate of a foreign legal entity.

"Contract" has the meaning given at 20 U.S.C. § 1011f(h)(1).

"Foreign source" has the meaning given at 20 U.S.C. § 1011f(h)(2).

"Gift" has the meaning given at 20 U.S.C. § 1011f(h)(3).

"Institution" has the meaning given at 20 U.S.C. § 1011f(h)(4) and for purposes of this investigation and record request includes UMD and all affiliated entities (e.g., centers, schools, boards, foundations, laboratories, research facilities, branches, and/or non-profit organizations, their employees, faculty, lecturers, researchers, and fellows) operating substantially under UMD's auspices or for its benefit.

"Record" means all recorded information, regardless of form or characteristics, made or received by you, and

including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics.

"Restricted or conditional gift or contract" has the meaning given at 20 U.S.C. § 1011f(h)(5).

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the validity of your claim. Please note no other privileges apply here.

Your record and data preservation obligations are outlined at Exhibit A.

This investigation will be directed by the Department's Office of the General Counsel with support from Federal Student Aid. Please contact Mr. Patrick Shaheen at Patrick.Shaheen@ed.gov regarding production of the requested information.

Sincerely yours,

Reed D. Rubinstein
Principal Deputy General
Counsel
delegated the authority and
duties of the General Counsel

Appendix B - Letter to Massachusetts Institute of
Technology

September 26, 2019

L. Rafael Reif, President
Massachusetts Institute of Technology
77 Massachusetts Avenue
Room 3-208
Cambridge, MA 02139-4307

Re: Notice of 20 U.S.C. § 1011f Investigation and
Record Request/Massachusetts Institute of Technology

Dear President Reif:

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, requires the Massachusetts Institute of Technology to report statutorily defined gifts from and contracts with a foreign source to the U.S. Department of Education. These reports are posted at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department is concerned that your reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources to the Massachusetts Institute of Technology and/or its affiliated entities operating substantially under the auspices of your institution or for its benefit (e.g., laboratories, schools, centers, foundations, global "collaborations" and/or non-profit organizations such as the "Industrial Liaison Program", "Masdar Institute", the "Skolkovo Institute of Science and Technology", or the "MIT Campus, China", their employees, faculty, lecturers, researchers, and fellows) (collectively "MIT") as required by law. See, e.g. <http://news.mit.edu/2019/remarks-president-reif-institute-faculty-meeting-0918> (reporting

flaws in donor and gift agreement "process and practices"); <https://www.pogo.org/investigation/2019/02/universities-on-the-foreign-payroll/> ("Lester's report stated that, 'over the last three years, sponsored research projects funded by Saudi organizations accounted for 52% of all Saudi-funded expenditures at MIT.' *Yet most of the research sponsors listed in the report are not included as sources of monetary gifts or contracts in the federal data reviewed by POGO*") (emphasis added).

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation of MIT and now requests that you produce the following records within thirty days:

1. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

2. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with (i) the government of Saudi Arabia, Mohammed Abdul Latif Jameel, Saudi Aramco, the King Abdulaziz City for Science and Technology, SABIC, the King Fahd University of Petroleum and Minerals, the MiSK Foundation, the Olayan Financing Group, other Saudi nationals, and their agents; (ii) the government of People's Republic of China, the Central Committee of the Communist Party of China, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, Peking University, China University of Petroleum, Beijing Kaiwen Educational Technology Co. and their agents; (iii) the government of Qatar (including those persons known as the Qatar Foundation for Education, Science and Community Development aka the Qatar Foundation aka the Qatar National Research Fund), and its agents; and (iv) the government of Russia, the Skolkovo Foundation, Kaspersky Lab and Kaspersky Lab US, and their agents, to your Institution. The time frame for this request is January 1, 2012, to the present.

3. All records of, regarding, or referencing "Hanban" or the Office of Chinese Language Council International and its agents to your Institution. The time frame for this request is January 1, 2014, to the present.

4. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with the Confucius Institute and its agents to your Institution. The time frame for this request is January 1, 2010, to the present.

5. All records of, regarding, or referencing the audit and accounting practices and/or other institutional controls used to capture, track, report, and verify gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution. The time frame for this request is January 1, 2014, to the present.

6. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to your Institution that were not properly reported to the Department of Education. For each such gift, contract, and/or restricted or conditional gift or contract from or with a foreign source to your Institution, please explain your Institution's failure to report. The time frame for this request is January 1, 2014, to the present.

7. All records of, regarding, or referencing solicitation by your Institution of gifts, contracts, and/or restricted or conditional gifts or contracts with or from a foreign source. The time frame for this request is January 1, 2014, to the present.

8. All records of, regarding, or referencing compliance by your Institution with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.

9. All communications between your Institution and a foreign source listed as or a resident of a country requiring cooperation with an international boycott pursuant to 26 U.S.C. § 999(a)(3). The time frame for this request is January 1, 2014, to the present.

10. All records of, regarding, or referencing actions taken and institutional controls created by your Institution to confirm (a) each foreign source has not violated 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b) each gift, contract, and/or restricted or conditional gift or contract from or with a foreign source complies with Executive Order 13224. The time frame for this request is January 1, 2014, to the present.

11. Your Institution's IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.

12. A list of all persons at your Institution supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source (e.g., a research scientist working on a project testing artificial intelligence or other engineering systems funded in whole or in part by a foreign source, a foreign graduate student studying physics under a scholarship or other contractual arrangement with a foreign government, a fellow in a cultural studies program created by endowment or other gift from a foreign source). The relevant foreign source should be specified for each such person. The time frame for this request is January 1, 2014, to the present.

13. A list of the persons responsible for 20 U.S.C. § 1011f compliance for your Institution. The time frame for this request is January 1, 2014, to the present.

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"Institution" has the meaning given at 20 U.S.C. § 1011f(h)(4) and for the purposes of this investigation and record request includes MIT and all affiliated entities (e.g., centers, schools, boards, foundations, laboratories, research facilities, branches, and/or non-profit organizations, their employees, faculty, lecturers, researchers, and fellows) operating substantially under MIT's auspices or for its benefit.

"Record" means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics.

"Restricted or conditional gift or contract" has the meaning given at 20 U.S.C. § 1011f(h)(5).

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the validity of your claim. Please note no other privileges apply here.

Your record and data preservation obligations are outlined at Exhibit A.

This investigation will be directed by the Department's Office of the General Counsel with support from Federal Student Aid. Please contact Patrick Shaheen at Patrick.Shaheen@ed.gov with any questions you might have regarding production of the requested information.

Sincerely yours,

Reed D. Rubinstein
Principal Deputy General
Counsel
delegated the authority and
duties of the General Counsel

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